

REMARKS/ARGUMENTS

Claims 1-6 and 8-17 are pending. Claims 1-17 were rejected as unpatentable over Forte in view of Antoon, Jr.

The present application relates to a multilayer packaging film for packaging fresh produce or other products requiring a controlled atmosphere within the package. The packaging film is permeable to oxygen, although at least one layer of the film is formed from an oxygen-impermeable composition. Outer layers of the film are heat-sealable, being formed from a heat-sealable composition. In the claims as amended above, the/each layer formed from the oxygen-impermeable composition is microporous and is free of particulate filler.

Forte discloses a film having at least five layers with a structure of C:A:B:A:C. The "B" layer is a microporous core layer containing at least one thermoplastic polymer *and at least one particulate filler*. As such, Forte's "B" layer does not meet the microporous layer(s) of the present claims.

Antoon, Jr. discloses a controlled-atmosphere container for fresh produce or flowers. The container has a first panel that is substantially impermeable to oxygen and CO₂ but permeable to water vapor (col. 2, lines 4-5), and a second panel of microporous film that is gas-permeable but substantially impermeable to water vapor (col. 1, line 68 through col. 2, line 3). The first panel can comprise cellophane, polyurethane, a crosslinked silicone membrane, or a silicone-coated microporous film (col. 3, lines 14-17).

Antoon, Jr. discloses that the microporous films of his package are prepared from a polymer *having an inert filler* dispersed therein (col. 3, lines 52-53; col. 4, lines 18-34 and 52-68).

Thus, both Forte and Antoon, Jr. disclose only filled microporous films. In contrast, the present claims recite microporous layers that are free of particulate filler.

Therefore, Forte, alone or in combination with Antoon, Jr., fails to teach or suggest the claimed invention.

Furthermore, Applicant reiterates, as noted in the Amendment After Final filed on April 12, 2006, that Forte and Antoon, Jr. would not have been combined as asserted in the Office Action. Forte has a key objective of providing *breathability* for his multilayer film structure. In contrast, Antoon, Jr. describes his silicone-coated microporous film as being substantially *impermeable* to the flow of O₂ and CO₂ (col. 2, lines 4-5 – note the cellophane panel is alternatively a silicone-coated microporous film as described at col. 3, lines 14-17). Applicant continues to maintain that a person of ordinary skill in the art would have had a disincentive to use Antoon, Jr.'s silicone-coated microporous film in Forte's structure, as it would tend to impair the achievement of the breathability Forte desires.

The Office Action broadly construes "substantially oxygen-impermeable" as meaning "oxygen-permeable" since some amount of oxygen can permeate virtually anything. This reasoning, however, completely ignores the way a person of ordinary skill in the art would read and understand Antoon, Jr. Such person would not read "substantially oxygen-impermeable" and think that the silicone-coated microporous film would be a good choice for use in a multilayer structure in which breathability is a key objective. Rather, the person would dismiss Antoon, Jr.'s microporous film as not being suitable for such a structure.

For at least the above reasons, it is respectfully submitted that the rejections of Claims 1-6 and 8-17 have been overcome and should be withdrawn.

Conclusion

Based on the above amendments and remarks, it is submitted that the application is in condition for allowance.

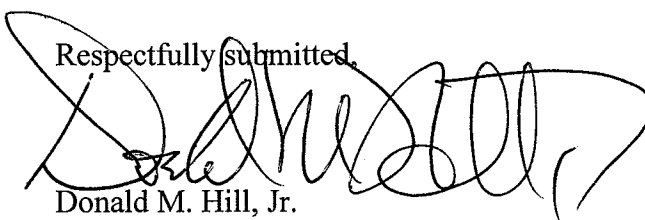
Appl. No.: 10/661,848

Amdt. Dated 10/18/2006

Reply to Office Action of Office Action dated July 27, 2006

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefor (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donald M. Hill, Jr.", written over the typed name.

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